

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ELVIN TALLY,

Plaintiff,

v.

No. CV 20-409 CG

KILOLO KIJAKAZI,¹
Commissioner of the
Social Security Administration,

Defendant.

**ORDER GRANTING UNOPPOSED MOTION TO AWARD ATTORNEY FEES
UNDER THE EQUAL ACCESS TO JUSTICE ACT**

THIS MATTER is before the Court on the parties' *Stipulated Motion for Award of Attorney Fees Under the Equal Access to Justice Act* (the "Motion"), (Doc. 37), filed October 29, 2021. In the Motion, the parties indicate that Mr. Tally seeks attorney fees in the amount of \$7,275.00. *Id.* at 1. Further, the parties agree that "[p]ayment of this amount shall constitute a complete release from and bar to any and all claims Plaintiff may have relating to [the Equal Access to Justice Act ("EAJA")] fees in connection with this action[,]" and that "the EAJA award is without prejudice to Plaintiff's attorney's right to seek attorney fees pursuant to Social Security Act § 206(b), 42 U.S.C. § 406, subject to the offset provisions of the EAJA." *Id.* The Court, having reviewed the Motion under EAJA, 28 U.S.C. § 2412, finds the Motion is well-taken and shall be granted.

IT IS THEREFORE ORDERED that Plaintiff be awarded \$7,275.00 in attorney fees pursuant to EAJA, 28 U.S.C. § 2412, made payable to Plaintiff but mailed to Plaintiff's attorney. *See Astrue v. Ratliff*, 560 U.S. 586 (2010) (EAJA fees are paid to the prevailing party, not the attorney).

¹ Kilolo Kijakazi was appointed Acting Commissioner of the Social Security Administration on July 9, 2021.

IT IS FURTHER ORDERED that if Plaintiff's counsel receives attorney fees under both the EAJA and 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Carmen E. Garza', with a long horizontal line extending to the right.

THE HONORABLE CARMEN E. GARZA
CHIEF UNITED STATES MAGISTRATE JUDGE